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8

9 **UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 SHERI GARAY

Case No. 4:08-cv-01059-SBA

12 Plaintiff,

13 v.

14 UNUM LIFE INSURANCE COMPANY
15 OF AMERICA; DOES 1-10

16 Defendants.

17 _____ /

18 **DECLARATION OF CHRISTINE
19 HOPKINS IN OPPOSITION TO
20 DEFENDANT'S MOTION FOR PARTIAL
21 SUMMARY JUDGMENT**

22 **Date: July 22, 2008**
23 **Time: 1:00 p.m.**
24 **Crtrm: 3**

25 **Honorable Saundra Brown Armstrong**

26 I, Christine Hopkins, declare under penalty of perjury of the laws of the United States of
27 American that the following is true and correct:

28 1) On June 4, 2008, our office received Unum's initial disclosures which consisted of 2,464
pages of Plaintiff Sheri A. Garay's claims file.

29 2) On June 24, 2008, I scanned through each and every page of the 2,464 pages worth of initial
30 disclosures served to Plaintiff by Unum. The rider addressed to "Sheri A. Garay" which is attached as
31 Exhibit 1 to the declaration of Sheri A. Garay did not appear in the initial disclosures, which I
32 understood to be Unum's entire claims file with the exception of a few documents withheld based on

1 attorney-client privilege. The initial disclosures also did not include the premium invoices, copies of
2 checks, or employee opt-out forms included as Exhibits E through PP.
3

4 3) On June 23, 2008, I talked by telephone with Rebih Kantar, the current owner of New Age
5 Optical. I requested a copy of his policy with Unum for disability benefits so that I could compare it with
6 the policy of Site for Sore Eyes. I also requested any letters sent to him by Unum about cancelling Site
7 for Sore Eyes' coverage and/or transferring the policy to New Age Optical. Mr. Kantar informed me it
8 would take him a while to find the documents and that he was leaving on vacation as of Wednesday June
9 25, 2008 and would not be able to get me the documents by the time he left. I will be out of state as of
10 June 28, 2008 on a pre-planned vacation lasting until July 8, 2008. I was not able to obtain a copy of
11 New Age Optical's policy from Mr. Kantar prior to leaving on my vacation and therefore did not have
12 the benefit of reviewing those documents prior to finalizing this Opposition to Defendants' Motion for
13 Partial Summary Judgment.
14

15 4) I have a good faith belief that further discovery is required to determine key facts relevant to
16 the determination of whether ERISA governs my client's claims against Unum.
17

18 5) I specifically need to review the policy for New Age Optical and any and all documents
19 relating to the cancellation of Site for Sore Eye's coverage and any and all documents relating to the
20 cancellation of coverage of the employees of Site for Sore Eyes in order to determine if these documents
21 support a legal claim for de facto conversion of any group policy for Site to Sore Eyes to an individual
22 policy after the sale of the business. In the alternative, if it is the case that Unum argues the same policy
23 now covers New Age Optical and its employees, I need to find out from New Age Optical whether its
24 practices qualify its policy for the safe harbor from ERISA.
25

26 6) I specifically need to request from Unum all policies and riders referring to Sheri A. Garay
27

1 and any and all booklets and or letters prepared for the employees of Site for Sore Eyes and any and all
2 booklets prepared for Sheri A. Garay to determine if the documents support a legal claim pursuant to
3 *Laventure v. Prudential Co. of America*, 237 F.3d 1042 (9th Cir. 2001) that my client had a policy
4 separate and apart from her employees, as she in good faith believes (Garay Decl. ¶ 9). When reviewing
5 the claims file, I noticed that early on Unum referred to Sheri A Garay's policy number as 0108121 -
6 0001, leading me to believe that her employees may have had a different policy numbered 0108121 -
7 0002 or some different number. As stated in Paragraph 5, when I reviewed the claims file, I did not see
8 the document attached as Exhibit 1 to my client's declaration - a rider addressed to "Sheri A. Garay" -
9 and therefore am concerned that Unum's initial disclosures are not full and complete production of all
10 documents Unum possesses about my client's policy.

Executed on June 27 2008 in Walnut Creek, CA.

BY: _____ /s/ _____
CHRISTINE HOPKINS